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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

JORGE MARTINEZ,

Defendant and Appellant.

B217007

(Los Angeles County
Super. Ct. No. NA080685)

APPEAL from a judgment of the Superior Court of Los Angeles County. John David Lord, Judge. Affirmed.

California Appellate Project, Jonathan B. Steiner and Ann Krausz, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Jorge Martinez was charged with one count of receiving stolen property. On April 29, 2009, following a three day trial, a jury found defendant guilty. Defendant then pled no contest to an unrelated misdemeanor charge, and the trial court also found defendant in violation of a previously ordered probation for a drug offense. Defendant was given a midterm, two year prison sentence on the receiving stolen property charge and concurrent two year and six month sentences on the probation violation and misdemeanor charge, respectively.

The salient facts were as follow: The driver of an 18 wheel truck parked his vehicle near an intersection in Long Beach at 4:00 a.m. on the morning of January 2, 2009. The driver had a scheduled delivery at a nearby business that had not yet opened. While sitting in the cab of his truck, the driver saw defendant and another man bring some power tools in a shopping cart in the direction of a nearby oil field. The men, each of whom was riding a bike, with the shopping cart between them, aroused the driver's suspicions. He watched over several minutes as the two men climbed a fence that secured the oil field, lifted the power tools over the fence and took the items across the field. Eventually the truck driver lost sight of the two men as they walked to the far end of the field, but later saw that they had returned to the inside of the fence, empty handed. The two men hopped over the fence, walked past the 18 wheeler, and left the scene.

The truck driver gave a description of the events and the two men to a 911 dispatch operator. Significant was that the truck driver identified one of the men as wearing a dark blue or black jersey or sweatshirt with the number "3" on it. During the course of the conversation, the operator told the driver that a few blocks away police officers had stopped two men generally matching the description. After the operator asked the driver a few more questions and apparently walking to the officers in the field, the operator said: "Yeah. Yeah. This is definitely going to be them." The operator then said the men were "probably going to be the guys," and then told the truck driver a police officer would take him to "make sure they're the right ones."

Police arrived and escorted the driver to the scene, where he identified defendant as the person with the number 3 on his clothing. Prior to the identification, an officer

read to the driver from a field identification admonishment form, which was received into evidence. Although he identified defendant at the scene, the driver stated the other person detained by police was not the second man at the oil field. At trial, the driver identified defendant and the power tools that were recovered from the oil field. Although the driver told police that each man was riding a bicycle, when defendant and the other man were detained, the police found only one bike, a four wheel ATV vehicle.

A security guard for the company that operated the oil field testified that he regularly made rounds that morning and that only he and his wife had authority to be on the grounds. He did not give permission for defendant to be on the property, and the power tools found at the scene did not belong to the oil rig operator and should not have been at the location.

The owner of a Long Beach business testified that sometime between December 30, when he locked his business, and the first week of January, when he returned after the holidays, several power tools were taken from the premises. The garage door to the business was dismantled. He identified photographs of the tools that police gave him as his missing property.

A Long Beach police officer testified that he contacted the truck driver on January 2, 2009, read him a field identification admonition card and transported the driver to a location where two men were being detained by other officers. The driver identified defendant as one of the men he saw taking the power tools to the oil field. That officer also testified that he went onto the oil field property that evening and saw that the dirt was muddied. Another officer testified that when he detained defendant and another man that evening, they both had mud on their shoes. That officer also stated that a few days after he was arrested defendant told the officer that he was in the area helping a friend push a four wheel vehicle. At the time of the interview defendant was wearing a black basketball jersey with the number 3 on it.

Other than an objection to CALCRIM No. 362 on false or misleading statements, the defense did not object to any of the court's instructions nor to any of the prosecution argument.

We appointed counsel to represent appellant. On November 24, 2008, counsel filed a brief under *People v. Wende* (1979) 25 Cal.3d 436 stating he could not find any colorable issues to argue on appeal. The clerk of this court sent a letter to appellant informing him he had 30 days to file a brief or letter if there were any issues he wished us to consider. No brief was filed.

We have reviewed the record and find no arguable issues for appeal.

DISPOSITION

The judgment is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.